

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LEWIS BRISBOIS BISGAARD AND 4:22-cv-03279
SMITH LLP

VS. HOUSTON, TEXAS

MICHAEL JOSEPH BITGOOD, ET
AL. OCTOBER 6, 2022

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS

THE COURT: Okay. Good afternoon and welcome.

We're on the record in Lewis Brisbois versus Bitgood. We'll take appearances of counsel beginning with the plaintiff, please.

MR. HELFAND: Good afternoon, Your Honor.
William Helfand, Bennett Fisher and Sean Braun for the
plaintiff.

THE COURT: Welcome.

MR. HELFAND: Thank you.

THE COURT: For defendants?

MR. BITGOOD: (No audio.)

THE COURT REPORTER: I am not hearing that person speak. Was that you, Mr. Beers?

MR. BEERS: That was Mr. Bitgood.

This is Brad Beers. I'm pro se at the moment,
Your Honor.

MR. BITGOOD: I'm going to try again. Can you hear me now?

THE COURT REPORTER: Yes. If you get up close to the mic, I can hear you.

MR. BITGOOD: Good afternoon, Your Honor.

Michael Bitgood appearing pro se.

MS. NORMAN: Good afternoon, Your Honor. Susan Norman
appearing pro se for herself.

1 THE COURT: Does anybody else want to enter an
2 appearance, or are they just here for observation purposes?

3 MR. HELFAND: The other folks are either observing or
4 are witnesses, Your Honor.

5 THE COURT: Okay. We're here on plaintiff's motion for
6 preliminary injunction. I will give plaintiffs ample
7 opportunity to speak; but before I do that, I need to hear from
8 defendants. I've not had a case like this before in my 23
9 years on the bench, and I guess I have questions more than
10 anything else as to how we ended up where we're ending up.

11 So if someone would like to speak to the issue of
12 the adoption of the law firm's name by the other side, I'd
13 welcome any insight.

14 MR. BITGOOD: Could I be heard, Your Honor?

15 THE COURT: Yes, you may.

16 MR. BITGOOD: Good afternoon. Your Honor, we did not
17 adopt the law firm's name. What we did is they allowed the
18 name Lewis Brisbois -- (Technical difficulty).

19 THE COURT REPORTER: Once again I am not hearing you,
20 sir.

21 THE COURT: You're not audible, Mr. Bitgood.

22 MR. BITGOOD: Is that better?

23 THE COURT: No. Do you have a hand instrument you can
24 pick up?

25 MR. BITGOOD: A telephone?

1 THE COURT: Yes. I'm not fluent in the technology of
2 all of this. We're not hearing you.

3 MR. BITGOOD: Can anybody hear me now?

4 THE COURT: Yes, we can hear you now.

5 MR. BITGOOD: Okay. We'll go with this instead of that
6 microphone.

7 May I proceed, Your Honor?

8 THE COURT: Yes, you may.

9 MR. EASTON: Thank you, sir.

10 Your Honor, on March 9th of 2022 the Secretary of
11 State publicly posted that the name Lewis Bisgaard & Smith was
12 available because the plaintiff had not renewed their
13 registration and elected to voluntarily relinquish that
14 registration. At that point we had told the other side that if
15 you weren't going to renew it, we would take it. I guess they
16 took this as a joke. We took the registration, we did the
17 filings, we paid the Secretary of State's fees and we didn't
18 take the law firm's name. We took the name Lewis Brisbois
19 Bisgaard because it seemed like a sound business investment at
20 the time. We also facilitated the termination of a lawsuit
21 that we had against their (Technical difficulty). After that
22 lawsuit was going to be concluded -- sorry -- yes, I did get a
23 telephone call from one of their partners saying, "Now that you
24 won and you got everything you want, how about you give us back
25 the name?"

1 I said, "Well, when we finalize the deal, we'll
2 sit down and discuss it."

3 They were not interested in discussion. What
4 they were interested in is fighting.

5 And so I asked them "Why don't you come to the
6 mediation with Mr. Magenheim?"

7 They had no interest in going, so we settled the
8 underlying lawsuit and the only issue left is this one.

9 This afternoon, Your Honor, they filed a
10 counterclaim seeking declaratory relief in state court. The
11 state court can declare who has the right to use the name based
12 on the issue of the Secretary of State. Obviously we'll do
13 whatever you tell us to do. This is not a fight that we really
14 wanted, but we don't like being threatened and pushed around.
15 That's why we're here. We just don't --

16 THE COURT: I understand that they may have let the
17 registration lapse or decided affirmatively not to renew it,
18 but why did you want to use the firm's name?

19 MR. BITGOOD: It seemed like a good business investment
20 at the time, Judge. They voluntarily relinquished it. They
21 had letters from the Secretary of State saying, "If you don't
22 want this name anymore, don't renew it. It will become
23 available; and if you do want it again, you're going to have to
24 start all over again."

25 THE COURT: I understand that, but why did you want the

1 name? It doesn't seem like it has anything to do with what
2 you're doing.

3 MR. EASTON: Sorry, Your Honor, you broke up. I got a
4 squelch.

5 THE COURT: I understand that they may not have wanted
6 the name, but why would you think it was yours to take? It
7 seems like the firm had an institutional identity very
8 different from your own. I don't understand why you wanted to
9 use their name.

10 MR. EASTON: Your Honor, it seemed at the time -- it
11 may not be sound at the time now -- to be a good business
12 investment. We would open a mediation store and an arbitration
13 store. But the firm is saying that they had this firm for
14 20 years. That's not true. We checked with the patent and
15 trade office. They applied for the use of this name, Your
16 Honor, on the very date they filed the lawsuit in your court.
17 That would be September 23rd of 2022. It was available on the
18 federal side; it was available on the state side.

19 THE COURT: I need to hear from the other side.

20 Mr. Helfand?

21 MR. HELFAND: Mr. Easton is not a lawyer, so perhaps
22 the Court can excuse his misunderstanding of the law. And he
23 hasn't answered the Court's question, but he has made a number
24 of inaccurate statements. Mr. Easton, as Your Honor may know,
25 has already been found to have committed bankruptcy fraud by

1 this Court, with Judge Hoyt presiding, and was sentenced to the
2 federal penitentiary for that.

3 Mr. Easton has a number of other convictions for
4 crimes of moral turpitude, which under 609 the Court could
5 consider in determining his veracity. But he's either not
6 being honest with the Court, or he just doesn't understand what
7 he's saying. Either way, it's incorrect.

8 There is nothing from the Secretary of State that
9 said the firm would forfeit the right to use the name Lewis
10 Brisbois Bisgaard & Smith in its business. In fact, the
11 Secretary of State doesn't have the authority to make that
12 determination. What Your Honor has is a letter from the
13 Secretary of State saying that the firm's payment to be listed
14 as a foreign limited liability partnership to transact business
15 would expire on March 9th.

16 On March 26th -- the Court also has this -- the
17 Secretary of State's office -- I'm sorry.

18 On March 28th the Secretary of State's office
19 acknowledged payment of a fee and issued a certificate of
20 filing which specifically says that the firm has the authority
21 to transact business in the state of Texas for the purpose set
22 forth in the application under the name Lewis Brisbois
23 Bisgaard & Smith, L.L.P.

24 Your Honor has that.

25 What Mr. Easton did is not until two months later

1 in May of 2022. May 26th he filed a -- Mr. Beers assisted him
2 in filing a registration of a limited liability partnership by
3 the same name as well as on May -- I'm sorry -- June 1st
4 Mr. Easton filed, with Mr. Beer's assistance, an assumed name
5 with the Secretary of State.

6 Now, what Mr. Easton is saying that's so very wrong --
7 and I think the Court was asking about this -- is under
8 Section 5.001 of the Texas Business Organization Code,
9 Section 5.001 specifically says that the filing of a
10 certificate of formation of by an entity is not authority to
11 use the name.

12 Here's the quote: "does not authorize the use of
13 a name in this state in violation of the right of another under
14 federal trademark" -- I'm paraphrasing now "federal trademark,
15 Texas trademark law or the common law."

16 Mr. Easton also either falsely or inaccurately
17 represents to the Court that Lewis Brisbois does not have a
18 trademark, but Your Honor has these filed with the complaint.
19 The firm has Trademark No. 3,722,172 filed on December 8th,
20 2009 -- not 2022 -- 2009, to use the name and the insignia
21 Lewis Brisbois Bisgaard & Smith, L.L.P., quote, for legal
22 services, closed quote.

23 Now, if we need to get into it, the evidence will
24 show that those legal services include arbitration and
25 mediation services by attorneys throughout the country. As the

1 Court knows -- and by the way, Judge, that's not the only
2 filing that reserved that name. There's also the registration
3 No. 5,151,128, registered on February 28th, 2017 -- 5,151,123
4 registered on February 28th, 2017.

5 So I don't know if Mr. Easton is just trying to
6 defraud the Court like he's done before or if he just doesn't
7 understand what he's saying; but the name has been on file and,
8 as the Court knows, filing with the USPTO demonstrates
9 secondary meaning. However, if the Court would like, I'm quite
10 prepared to demonstrate that the name Lewis Brisbois Bisgaard &
11 Smith, L.L.P., has obtained secondary meaning under the laws of
12 trademark, including the United States Supreme Court's
13 recognition of the name Lewis Brisbois Bisgaard & Smith,
14 L.L.P., identifying a law firm of over 1600 lawyers, close to
15 4,000 employees who practice law in 60 offices in America
16 constituting what, from time to time, is usually the fifth,
17 sixth, seventh or eighth largest law firm in America. That
18 Mr. Easton is using a confusing name is undeniable. He's using
19 the identical name. That he did it for purposes of creating
20 confusion is equally undeniable because, as I provided to the
21 Court, in a Law 360 article, which the Court has, in answering
22 the question of why Mr. Easton registered this name, he said,
23 quote -- one moment here, Judge.

24 On September 26th in a Law 360 online article
25 Mr. Easton said: "I don't like the way they treated us. I

1 don't like the pranking" -- this is what the article said --
2 "Bitgood said, when asked why he'd registered the Lewis
3 Brisbois name."

4 Now, Ms. Norman is also using the Lewis Brisbois
5 Bisgaard & Smith name; and she is identifying, as the Court has
6 seen, herself as an attorney and certified mediator under that
7 name. That also violates State Bar Rule 7.01 as it applies to
8 an attorney. Mr. Bitgood, who has never been an attorney
9 obviously, isn't in violation of that rule.

10 I'm fully prepared to put on the evidence
11 necessary to obtain a preliminary injunction, Your Honor; but I
12 think what would be most fair and most expeditious would be for
13 the Court to enter a temporary restraining order which
14 precludes these folks from using that name in any way, which is
15 the last peaceable condition, and allow us some expedited
16 discovery to determine the nature, extent and purpose of the
17 defendant's use of my law firm and client's registered and
18 recognized trademark and then come back for a preliminary
19 injunction hearing if that's appropriate after doing that
20 discovery. If Mr. Bitgood intends to make good on his proposal
21 to stop infringing, we would have the opportunity to have that
22 discussion with him.

23 But it has nothing to do with the underlying
24 lawsuit, Your Honor; and it has nothing to do with registering
25 with the State of Texas to conduct business. It has -- because

1 the State of Texas does not authorize one to use a name in
2 trade. It simply registers a business to do business in
3 accordance with the laws of the State of Texas. Again, to the
4 extent that the Court has the opportunity, I think you'll find
5 the answer to that question in 5.001 of the Business
6 Organizations Code.

7 THE COURT: Mr. Helfand, tell me the status of the
8 underlying case.

9 MR. HELFAND: Say again, sir.

10 THE COURT: Tell me the status of the underlying case.

11 MR. HELFAND: I am informed that the underlying case
12 has been resolved by -- well, so here's the -- the underlying
13 case was Mr. Easton and Mr. Jones bringing an action against a
14 landlord and others based upon an eviction. My partner,
15 David Oubre, appeared in that case to defend that lawsuit.
16 Mr. Bitgood filed a motion to challenge Mr. Oubre's authority
17 to represent the defendants in that case. About the same time
18 Mr. Bitgood amended the petition -- Mr. Bitgood and Mr. Jones
19 amended the petition for the purpose of seeking a declaratory
20 judgment that Lewis Brisbois Bisgaard & Smith lacks authority
21 to practice law in Texas, even though, as the Court knows, law
22 firms don't practice law in Texas; so ostensibly Lewis Brisbois
23 Bisgaard & Smith somehow lacks authority to operate as a
24 business in Texas and that Mr. Oubre lacks authority to
25 practice law in Texas.

1 So Mr. Oubre withdrew as having a conflict of
2 interest, and another lawyer was appointed to represent the
3 original defendants. The original defendants and Mr. Easton
4 reportedly did have a mediation at which the original
5 defendants and Mr. Easton reached an agreement. That agreement
6 did not include my law firm or my partner, Mr. Oubre; so I
7 don't know what's happened to that. But to the extent that
8 Mr. Easton filed a declaratory judgment action -- and
9 Mr. Jones -- against my law firm and my partner as to their
10 authority to conduct business and, in Mr. Oubre's case, to
11 practice law in Texas, we have responded with a counterclaim of
12 a declaratory judgment that they are authorized under the law
13 to do those things. So where we are is I don't know if
14 Mr. Bitgood and Mr. Jones have nonsuited or otherwise resolved
15 their claims against the other defendants, but I'm told they've
16 reached an agreement that would include doing that.

17 THE COURT: Ms. Norman, I did see stationery where you
18 appear to list yourself as a lawyer for Lewis Brisbois
19 Bisgaard & Smith.

20 MS. NORMAN: Yes, sir.

21 THE COURT: Is that an error?

22 MS. NORMAN: I'm an attorney and I'm representing the
23 Texas L.L.P., but I would appreciate the opportunity to correct
24 something that Mr. Helfand failed to tell the Court.

25 THE COURT: Could you answer my questions first? Why

1 are you best listing yourself on law firm stationery as a
2 member?

3 MS. NORMAN: As a member?

4 THE COURT: As a member of the firm, yes.

5 MS. NORMAN: I'm a member of the mediation and
6 arbitration -- the firm was -- the L.L.P. for Texas was formed
7 to do mediations and arbitrations, and I'm a member. I'm a
8 partner in that firm.

9 THE COURT: Which firm is that now?

10 MS. NORMAN: Lewis Brisbois Bisgaard & Smith, L.L.P.,
11 filed in Texas on March the 26th of this year.

12 THE COURT: How long have you been a partner there?

13 MS. NORMAN: Since March the 26th.

14 THE COURT: Do you have membership in any other firms?

15 MS. NORMAN: No, sir, other than my own sole practice
16 as a lawyer.

17 THE COURT: Have you during your career listed yourself
18 as a member of any other firm?

19 MS. NORMAN: No, sir.

20 THE COURT: Why did you do it with Lewis Brisbois?

21 MS. NORMAN: For the same reason that Mr. Bitgood is
22 stating. When I -- I have a practice, and I have had a
23 practice for many years of reviewing filings of opposing
24 entities. I found that in the filings of Mr. Oubre in the
25 underlying case, when he filed the original answer on March the

1 11th, the law firm Lewis Brisbois Bisgaard & Smith was not
2 authorized to conduct business in Texas because it had
3 voluntarily relinquished its right to do so, making the filings
4 by Mr. Oubre on behalf of the plaintiffs void filings.

5 THE COURT: Whether they are properly registered or
6 not, what makes you think you can use the name for yourself?

7 MS. NORMAN: Because it was available.

8 THE COURT: Weren't you concerned about the prospect of
9 confusion?

10 MS. NORMAN: I'm sorry?

11 THE COURT: Weren't you concerned about the prospect of
12 confusion?

13 MS. NORMAN: No, sir, because all of the service mark
14 registration that we've looked up for the USPTO, they're --
15 they don't have mediation and arbitration shown on their -- as
16 part of their service mark. One thing that I think is very
17 important, if the Court will allow me, Exhibit 1, as stated by
18 Mr. Helfand, filing 3,722,172, for the forename Lewis Brisbois
19 Bisgaard & Smith, he did not tell the Court that on July the
20 10th, 2020, that name was canceled by the U.S. Patent and Trade
21 Office. That name -- they have no rights under the USPTO
22 filings, so far as I can find, to that name. They let it go.
23 What they filed on September 23rd was a two-word service mark
24 "Lewis Brisbois."

25 THE COURT: I don't understand. Whatever happened with

1 their name, whether it lapsed or somehow it was discontinued, I
2 don't understand why you can claim that name.

3 MS. NORMAN: Because it's available.

4 THE COURT: Well, that's not the test for naming rights
5 and --

6 MR. BITGOOD: Judge, may I inject something that may
7 help us all? If we agree to quit right now, will they agree to
8 quit and we leave them alone and can we give them back the
9 name?

10 THE COURT: You probably need some time to discuss
11 that. I'm still very puzzled at why --

12 MR. BITGOOD: I can see the Court is concerned about
13 this and I don't think it's going the way I wanted it to go and
14 I can tell from reading between the lines that it's best
15 sometimes to just, as you once said in your memorandum, we live
16 on a small planet. Quoting JFK, there's better things to do
17 than fight, fight, fight.

18 THE COURT: I agree this needs to be resolved. I agree
19 with that.

20 MR. BITGOOD: Well, if they would agree right now on
21 your record to leave us alone, we would leave them alone and do
22 a wind-down and close our shop if that is acceptable to them.

23 THE COURT: Does Lewis Brisbois want some time to
24 discuss that?

25 MR. HELFAND: First I need to respond to something

1 Ms. Norman said. We've got to get away from this term
2 "voluntarily relinquished." There is no evidence the firm
3 voluntarily relinquished anything. We were late on repaying
4 the registration with the Secretary of State. We'll take full
5 responsibility for that. That is not a relinquishment of the
6 name. Also Ms. Norman, as a lawyer, should be ashamed to tell
7 the Court that that somehow makes a trademark name available.
8 The Secretary of State says they don't make names available.
9 In fact anyone today could go register Lewis Brisbois
10 Bisgaard & Smith, L.L.P., in addition to everybody else who is
11 registered with the Secretary of State. Ms. Norman is just
12 flat wrong about that, and I'll take that up also with the bar.

13 That said, to respond to Mr. Easton's proposal,
14 here is what I suggest. If the defendants will agree to a
15 temporary restraining order that temporarily precludes them
16 from publishing the name Lewis Brisbois Bisgaard & Smith,
17 L.L.P., for the next 14 days, I would be happy to work with the
18 defendants to try to reach a resolution. Oh, and expedited
19 discovery if we can't reach an agreement, Your Honor.

20 THE COURT: Mr. Easton?

21 MR. EASTON: The proposition that we put on the table
22 is we will relinquish the name right here before you right now.

23 MR. HELFAND: There's more to it than that, Judge. We
24 have damages. There's the potential for statutory damages, and
25 we've got to resolve some related issues. So it's not as

1 simple as Mr. Easton proposes; but since he's willing to
2 relinquish it right now, if he'll agree and the other three
3 defendants will agree not to use the name again for the next
4 14 days while we discuss resolution, I'm happy to do that.

5 MR. BITGOOD: Your Honor, may I bring to the Court's
6 attention, since Mr. Helfand says they're seeking damages and
7 everything --

8 THE COURT: Is this Mr. Easton?

9 MR. BITGOOD: Yes, sir.

10 THE COURT: Go ahead.

11 MR. EASTON: May I bring to the Court's attention,
12 please, a counterclaim seeking relief of damages and attorney's
13 fees down in the state court in rem proceeding. We may be
14 wholly and totally wrong for whatever reason; but I'm on the
15 record now telling you if that's what we did, we're willing to
16 resolve it. No more maneuvers. If they really want to resolve
17 the thing, they'll say they agree not to do it. Your Honor,
18 I'm in front of a federal judge. Do they think I'm going to
19 tell you something and turn around and do something else?

20 MR. HELFAND: Well, that is what happened with Judge
21 Hoyt, but that's a story for a different time.

22 MR. BITGOOD: What are you talking about with
23 Judge Hoyt?

24 MR. HELFAND: Judge, my offer stands. If Mr. Easton is
25 sanguine in his proposal, then he and his fellow defendants

1 should agree to a temporary restraining order, give us time to
2 negotiate a complete resolution and, failing that, an
3 opportunity to do discovery and come back to the Court with a
4 more fulsome preliminary injunction.

5 Because here's the thing. I appreciate
6 Mr. Easton's acknowledgment. I'm going to have no problem
7 proving this name belongs to a law firm of 1600 lawyers in 59
8 offices across the United States. Its has acquired secondary
9 meaning beyond anybody's wildest dreams, and the registration
10 and use of the identical name is clearly an effort to confuse
11 the community. And by the way, I've got the city attorney of
12 the City of Sugar Land on who's already prepared to testify
13 that Mr. Easton's letters to her on my firm's letterhead is
14 that confusion.

15 So I'm happy to try to work it out, but I'm not
16 going to do it on terms dictated by Mr. Easton right here and
17 now. Whether by agreement, Your Honor, or by the Court's order
18 I would respectfully request that the Court enter a temporary
19 restraining order for 14 days, order expedited discovery if
20 after the next three or four days we have not resolved this
21 matter by agreement. I am not -- I do not believe my firm --
22 but I can't speak for my firm or this -- will hold up
23 resolution based upon a claim for damages; but I can't make
24 agreements with Mr. Easton right here and now. I answer to a
25 management committee that's based throughout the country.

1 THE COURT: Do defendants oppose a 14-day temporary
2 restraining order?

3 MR. BITGOOD: We do, Your Honor. We don't see the
4 necessity of being enjoined when we're not going to do anything
5 until we try to resolve this. What he wants is an order from
6 this Court to go waving it around all over the place saying,
7 "We beat them back."

8 MR. HELFAND: Judge, if I have compliance, I don't need
9 to wave it anywhere; and I don't like when other lawyers, or in
10 this case laypeople, tell me what they think I'm going to do.
11 I am focused on solving this problem. It is a waste of time
12 and significant resources of a big law firm that has other
13 things to do. I believed Mr. Bitgood when he told Law 360 that
14 he did it to screw with my law firm, and so far he's been
15 successful. I'm happy to try to resolve it, but Mr. Bitgood is
16 not going to dictate those terms here and now.

17 THE COURT: I really -- the only thing a judge brings
18 to a case is neutrality. He doesn't bring nearly the knowledge
19 that either side has. And I'm striving to be neutral here, but
20 I still haven't understood why. Regardless of what went on in
21 the Secretary of State's office, regardless of what oversights
22 might have occurred in the offices of Lewis Brisbois Bisgaard &
23 Smith, I don't understand why defendants ever had any right to
24 use the firm's name. I've never seen a case like where one
25 side uses another side's name to gain tactical advantage. It

1 doesn't compute to me.

2 And, Ms. Norman, I'd think you'd understand that.

3 MS. NORMAN: Yes, sir.

4 THE COURT: Do you understand -- do you have any basis
5 for saying you have a right to use the law firm's name?

6 MS. NORMAN: Well, I looked at the history of
7 relinquishment of that name -- the relinquishment of the name
8 with the authority to do business in Texas multiple times. It
9 looked like a voluntary relinquishment; and it looked like, as
10 Mr. Easton said, a business opportunity. That's all it was.

11 The COURT: Well, if General Motors were to lapse in
12 its registration, would you think you could call yourself
13 "General Motors"?

14 MS. NORMAN: Depending upon the circumstances, Your
15 Honor, possibly. If they lost the right to do business in
16 Texas under that name, which is what Lewis Brisbois did when
17 they lost the right.

18 MR. HELFAND: Judge, may I -- I need to hasten to point
19 out that Ms. Norman's premise is absolutely false. Your Honor
20 has it on March 28th the Secretary of State acknowledged
21 payment for the foreign company Lewis Brisbois Bisgaard &
22 Smith, L.L.P., to conduct business in Texas. It wasn't until
23 two months later that Ms. Norman and Mr. Easton, with
24 Mr. Beer's complicity, registered the assumed name and then
25 more than two months later that they created the company in the

1 exact same name. It's just a fact, Judge. Why Ms. Norman will
2 not acknowledge a fact to the Court in violation of her duty to
3 the Court makes no sense to me.

4 MS. NORMAN: In my duty to the Court, Your Honor, I
5 will also acknowledge that starting in early May I began
6 checking the website of the Secretary of State. I looked
7 virtually every day. The -- what Mr. Helfand is saying about
8 March 28th is because on June the 9th the Secretary of State
9 accepted their filing, which may have been mailed in
10 March 28th; but that was not on the website. That was not
11 available to see and I spoke with the Secretary of State on
12 June 9th and the filing number for their new application, which
13 they say -- the Secretary of State stamped, backdated as to
14 March 28th, is 9,342 or -24 numbers later than what we filed on
15 May the 26th. So his statement that this happened --

16 MR. HELFAND: It doesn't explain the mistake of doing
17 it -- Judge, it has nothing to do with the right to use the
18 name; but even if Ms. Norman actually honestly believes that,
19 she's already admitted she found out that the Secretary of
20 State made an authorization for the firm to conduct business
21 dated March 28th. So I could understand if she did something
22 for a short time and then said, "Oops, now that I know the
23 Secretary of State authorized your law firm to continue to
24 conducting business as of March 28th, I'm going to stop doing
25 this"; but a moment ago on the record she told you she still

1 has the right to do that. She doesn't as a matter of law.

2 MR. BITGOOD: Your Honor, I'd just like to be brief if
3 you would allow me.

4 THE COURT: Yes, sir.

5 MR. BITGOOD: The Secretary of State maintains serial
6 numbers for each filing as to who has the right to use a name.
7 Now, I may be completely wrong and out of -- completely out of
8 the water on this issue, because I can assure you this is my
9 first time having engaged myself in this; but our number, our
10 serial number, 804584868, we got approved to do business.
11 That's the day we started. Their serial number, Your Honor,
12 irrefutable before the Court, is 804594502. That comes 9,634
13 registrations with that name behind ours. We did it by the
14 book. Now, if we are still wrong by having done it all by the
15 book, I'm willing to surrender now. I raise the white flag
16 before His Honor to terminate this thing.

17 THE COURT: I don't think the question of what happened
18 to the Lewis Brisbois status in Texas has anything to do with
19 the right of individuals not associated with the firm to use
20 that name. Those are two entirely different concepts. Lewis
21 Brisbois is far and away the senior user of the name and it has
22 acquired secondary meaning and I don't think the consequence of
23 a delay in paying a registration fee or renewal fee needs to
24 result in anybody can then start practicing under that name.
25 That's the part that puzzles me about this.

1 MR. BITGOOD: Well, it should puzzle you no more, Your
2 Honor. I raise the white flag.

3 THE COURT: Well, I'm going to enter a temporary
4 restraining order to prevent further use of the name; and we'll
5 have a 14-day period where parties can attempt to achieve a
6 settlement that's documented in writing, and I hope that will
7 then be the end of this case. It really is not a good use of
8 anybody's time to be arguing about this, and I can only see
9 further harm if the status quo is continued.

10 MR. BEERS: May I comment further on that issue, Judge?

11 THE COURT: Who's speaking, please?

12 MR. BEERS: Brad Beers.

13 THE COURT: Yes, sir.

14 MR. BEERS: In as much as it's never been alleged, I
15 don't believe, that I've ever used that name, the allegation
16 against me is that I filed a certificate of assumed name in the
17 Secretary of State's office in a period when there was no
18 registration on file. I would ask the Court to exclude me from
19 that temporary restraining order. I have no intention of
20 starting to use that name. I'm never used it, but I would just
21 as soon not have a temporary restraining order against --
22 entered against me for what I did practicing law on behalf of
23 Mr. Bitgood four months ago.

24 MR. HELFAND: Your Honor, Mr. Beer misstates
25 allegations against him. Mr. Beers, who has had numerous cases

1 with lawyers of Lewis Brisbois Bisgaard & Smith, knowingly
2 conspired with Mr. Easton and Ms. Norman to falsely appropriate
3 the law firm's name. Mr. Beers voluntarily participated in
4 that conduct. He's not sued just for filing something. He's
5 sued for conspiring with the other defendants to misappropriate
6 the law firm's name; and if he's not going to do it, then he
7 should be part of the temporary restraining order telling him
8 he can't. What I don't want to find out -- let me say this as
9 to Mr. Beers. If he is stipulating on the record that he will
10 comply with the TRO even if not named in the TRO, I will tell
11 you on behalf of Lewis Brisbois excluding Mr. Beers by name is
12 fine, although I think the TRO is going to say, "the
13 defendants"; and Mr. Beers is and will be a defendant in this
14 lawsuit if it's not resolved by agreement. But if it means
15 something to Mr. Beers and the Court thinks it's appropriate to
16 not name him individually as restrained, based upon his
17 stipulation as a member of the bar of this Court, then I will
18 agree that the Court need not name Mr. Beers. But if Mr. Beers
19 does something further to impugn the name of the law firm or
20 assist others in doing so, then I will ask the Court to hold
21 him in contempt because Mr. Beers has a very misunderstood
22 impression of why he's being sued. Mr. Beers knowingly,
23 perhaps with greater knowledge than any other defendant,
24 assisted others in appropriating my law firm's name; and
25 Mr. Beers knew at all times during that -- because up until

1 recently I counted Mr. Beers as a friend. He knew at all times
2 he was doing that, that he was misappropriating the name of a
3 going law firm that has 1600-plus lawyers around the country.

4 THE COURT: I'm going to ask for each side to submit a
5 proposed order by noon tomorrow. I'll decide, based on that,
6 what the order is going to say.

7 MR. HELFAND: Yes, sir.

8 THE COURT: Are there any questions?

9 MR. HELFAND: Not from the plaintiffs, Judge.

10 MR. BEERS: No, sir.

11 MS. NORMAN: No, sir.

12 THE COURT: Thank you.

13 Yes? Yes? I can't hear you.

14 MR. BITGOOD: I'm sorry, sir.

15 Pending the Court entering this order, I would
16 like to remind the Court we're not going to do anything in
17 state court until you enter this order.

18 THE COURT: Not going to do anything what?

19 MR. BITGOOD: We're not going to do anything in the
20 state court system until you enter this order.

21 THE COURT: I can't control what happens in the state
22 court other than through the order I'm going to enter, and I
23 would hope that those cases could be brought to an end
24 contemporaneously with the resolution of this case.

25 MR. HELFAND: We share in your hope in that regard,

1 Your Honor.

2 THE COURT: Thank you very much.

3 MR. HELFAND: Thank you for your time, Judge.

4 MR. BEERS: Thank you.

5 MR. EASTON: Thank you.

6 (The proceedings were adjourned.)

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8 REPORTER'S CERTIFICATE

9 I, David S. Smith, CSR, RPR, CRR, Official
10 Court Reporter, United States District Court, Southern District
11 of Texas, do hereby certify that the foregoing is a true and
12 correct transcript, to the best of my ability and
understanding, from the record of the proceedings in the
above-entitled and numbered matter.

13 /s/ David S. Smith
14 Official Court Reporter
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